

By: Thompson, et al.

H.B. No. 3001

A BILL TO BE ENTITLED

AN ACT

relating to the monitoring of and provision of certain information regarding certain high-risk sex offenders; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0155 to read as follows:

Art. 42.0155. FINDING REGARDING HIGH-RISK SEX OFFENDER.

(a) This article applies only to an offense under:

(1) Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

(2) Section 43.25, Penal Code;

(3) Section 20.04(a)(4), Penal Code, if the conduct is committed with the intent to violate or abuse the victim of the conduct sexually; or

(4) Section 30.02, Penal Code, if the conduct is punishable under Subsection (d) of that section and is committed with the intent to commit an offense listed in Subdivision (1) or (2).

(b) In the trial of an offense to which this article applies, the court shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the court determines by a preponderance of the evidence that the defendant is highly likely to commit a subsequent offense to which this article applies during a time at which the defendant is not

1 confined in a penal institution.

2 SECTION 2. Title 1, Code of Criminal Procedure, is amended
3 by adding Chapter 61A to read as follows:

4 CHAPTER 61A. ELECTRONIC MONITORING OF
5 CERTAIN HIGH-RISK SEX OFFENDERS

6 Art. 61A.01. DEFINITIONS. In this chapter:

7 (1) "Department" means the Department of Public
8 Safety.

9 (2) "Local law enforcement authority" has the meaning
10 assigned by Article 62.001.

11 (3) "Monitoring system" means an electronic
12 monitoring service, global positioning satellite service, or other
13 appropriate technological service that is designed to track a
14 person's location.

15 (4) "Penal institution" means a confinement facility
16 operated by or under contract with any division of the Texas
17 Department of Criminal Justice.

18 Art. 61A.02. MONITORING OF CERTAIN HIGH-RISK SEX OFFENDERS.

19 (a) This article applies only to a person who is discharged from a
20 penal institution, who has been convicted of an offense for which
21 the judgment in the case contains an affirmative finding under
22 Article 42.0155, and who:

23 (1) is not under the supervision of the parole
24 division of the Texas Department of Criminal Justice; or

25 (2) has not been civilly committed under Chapter 841,
26 Health and Safety Code.

27 (b) A person described by Subsection (a) shall participate

1 in any monitoring system program implemented under Subsection (c).

2 (c) The department shall implement and coordinate a
3 monitoring system program that tracks the location of persons
4 subject to this chapter. A monitoring system program implemented
5 under this subsection must require:

6 (1) for each person subject to this chapter, the
7 department to provide monitoring system equipment, sufficient to
8 track the person's location, to the local law enforcement authority
9 designated as the person's primary registration authority under
10 Chapter 62;

11 (2) the local law enforcement authority designated as
12 a person's primary registration authority under Chapter 62 to use
13 the monitoring system equipment provided under Subdivision (1) to
14 verify the authenticity of any geographically verifiable
15 information, including residence, contained in a sex offender
16 registration form submitted by the person to that authority under
17 Article 62.051; and

18 (3) the manufacturer or vendor of the monitoring
19 system equipment provided to a local law enforcement authority
20 under Subdivision (1) to provide training and technological support
21 to the authority with respect to the equipment.

22 (d) A monitoring system that is part of a monitoring system
23 program described by Subsection (c) must track a person's location
24 and periodically provide a cumulative report of the tracked
25 person's location to the department. The monitoring system is not
26 required to be capable of tracking a person's location in real time
27 or providing a real-time report of the person's location to the

1 department.

2 (e) A person who is not indigent and who is required to
3 participate in a monitoring system program described by Subsection
4 (c) is responsible for the cost of the monitoring system and monthly
5 shall pay to the person's primary registration authority and to the
6 department the amount that the primary registration authority or
7 department, as applicable, determines is necessary to defray that
8 entity's cost of operating the system with respect to the person
9 during the preceding month.

10 (f) The public safety director of the department shall adopt
11 rules as necessary to implement and coordinate the monitoring
12 system program described by Subsection (c).

13 Art. 61A.03. EXEMPTION FROM MONITORING FOR CERTAIN SEX
14 OFFENDERS. (a) Beginning on the 10th anniversary of the person's
15 discharge from a penal institution, completion of a parole period,
16 or participation in an early release from supervision program under
17 Section 508.155(c), Government Code, whichever is latest, but not
18 more than once during each calendar year, a person required to
19 register under this chapter may petition the court having
20 jurisdiction over the case for an order exempting the person from
21 participating in a monitoring system program under this chapter.

22 (b) After a hearing on the petition described by Subsection
23 (a), the court may issue an order exempting the person from
24 participating in a monitoring system program under this chapter if
25 the court finds by a preponderance of the evidence that an exemption
26 would not constitute a threat to public safety.

27 (c) An order exempting the person from participating in a

1 monitoring system program under this chapter does not expire,
2 except that the court may withdraw the order if after the order is
3 issued:

4 (1) the person is convicted of an offense listed in
5 Article 62.001; or

6 (2) at a hearing, the court finds by a preponderance of
7 the evidence that the continuation of an exemption order issued
8 under Subsection (b) would constitute a threat to public safety.

9 Art. 61A.04. FAILURE TO COMPLY WITH MONITORING
10 REQUIREMENTS. (a) A person commits an offense if the person is
11 subject to this chapter and fails to participate in a monitoring
12 system program implemented under this chapter.

13 (b) An offense under this article is a felony of the third
14 degree.

15 Art. 61A.05. FUNDING. The department may solicit and
16 accept a gift, grant, or donation or other money from any source,
17 including the legislature or a foundation, private entity,
18 governmental entity, or institution of higher education, to help
19 fund the implementation of a monitoring system program under this
20 chapter.

21 SECTION 3. Subchapter A, Chapter 62, Code of Criminal
22 Procedure, is amended by adding Article 62.0052 to read as follows:

23 Art. 62.0052. ELECTRONIC MAIL REPORTS FOR STATE
24 LEGISLATORS. (a) The department shall maintain an electronic mail
25 report service to which a member of the house of representatives or
26 the senate of this state may electronically subscribe.

27 (b) The electronic mail report service maintained under

1 Subsection (a) must:

2 (1) allow a subscribing representative or senator to
3 request for each zip code any portion of which is located in the
4 representative's or senator's district notification of:

5 (A) the release from a penal institution or
6 placement on deferred adjudication community supervision,
7 community supervision, or juvenile probation of a person who
8 expects to reside or resides in that zip code and is required to
9 register under this chapter; and

10 (B) any change in address of a person who expects
11 to reside or resides in that zip code and is required to register
12 under this chapter; and

13 (2) not less frequently than monthly, deliver to the
14 subscribing representative or senator a report containing the
15 information described by Subdivision (1).

16 (c) The department must include any public information
17 described by Article 62.005 in an electronic mail report sent to a
18 subscribing representative or senator.

19 SECTION 4. Subchapter B, Chapter 62, Code of Criminal
20 Procedure, is amended by adding Article 62.0531 to read as follows:

21 Art. 62.0531. DETERMINATION OF PREDATORY RISK LEVEL. (a)
22 In this article, "sexually predatory conduct" means conduct that is
23 engaged in for the purpose of victimization and that:

24 (1) is directed toward a stranger, a person of casual
25 acquaintance with whom no substantial relationship exists, or a
26 person with whom a relationship has been established or promoted
27 for the purpose of victimization; and

1 (2) violates:

2 (A) Section 21.11(a)(1), 22.011, or 22.021,
3 Penal Code;

4 (B) Section 43.25, Penal Code;

5 (C) Section 20.04(a)(4), Penal Code, if the
6 conduct is committed with the intent to violate or abuse the victim
7 of the conduct sexually; or

8 (D) Section 30.02, Penal Code, if the conduct is
9 punishable under Subsection (d) of that section and is committed
10 with the intent to engage in conduct described by Paragraph (A) or
11 (C).

12 (b) In addition to assigning to a person a numeric risk
13 level of one, two, or three under Article 62.053(a), before a person
14 who will be subject to registration under this chapter and who will
15 be described by Article 62.063(b) on or after release is due to be
16 released from a penal institution, the Texas Department of Criminal
17 Justice or the Texas Youth Commission, as applicable, using the
18 dynamic risk assessment tool developed or adopted by the Council on
19 Sex Offender Treatment under Section 110.164, Occupations Code,
20 shall:

21 (1) determine the likelihood that the person will
22 engage in sexually predatory conduct after being released from the
23 institution; and

24 (2) assign to the person a predatory risk level of low,
25 medium, or high.

26 SECTION 5. Subchapter B, Chapter 62, Code of Criminal
27 Procedure, is amended by adding Article 62.063 to read as follows:

1 Art. 62.063. MONITORING OF CERTAIN HIGH-RISK REGISTRANTS.

2 (a) In this article, "monitoring system" means an electronic
3 monitoring service, global positioning satellite service, or other
4 appropriate technological service that is designed to track a
5 person's location.

6 (b) This article applies only to a person 18 years of age or
7 older who is released from a penal institution, who is required to
8 register under this chapter as the result of a reportable
9 conviction or adjudication, and who:

10 (1) is not otherwise subject to monitoring under
11 Chapter 61A;

12 (2) is not under the supervision and control of:

13 (A) the Texas Youth Commission;

14 (B) a community supervision and corrections
15 department; or

16 (C) the parole division of the Texas Department
17 of Criminal Justice; or

18 (3) has not been civilly committed under Chapter 841,
19 Health and Safety Code.

20 (c) A person described by Subsection (b) who, under Article
21 62.0531, is assigned a predatory risk level of high shall
22 participate in any monitoring system program implemented under
23 Subsection (d). A person's duty to participate in the program
24 expires on the third anniversary of the date the person is released
25 from the penal institution.

26 (d) Subject to the receipt of one or more grants awarded by
27 the criminal justice division of the governor's office, the

1 department shall implement and coordinate a monitoring system
2 program that tracks the location of persons subject to this
3 article. A monitoring system program implemented under this
4 subsection must require:

5 (1) the department to provide to each local law
6 enforcement authority designated as the primary registration
7 authority under this chapter for a person subject to this article
8 monitoring system equipment that is sufficient to track the
9 location of the person;

10 (2) each local law enforcement authority designated as
11 a person's primary registration authority under this chapter to use
12 the monitoring system equipment provided under Subdivision (1) to
13 verify the authenticity of any geographically verifiable
14 information contained in the registration form of a person subject
15 to this article, including the person's residence; and

16 (3) the manufacturer or vendor of the monitoring
17 system equipment provided to a local law enforcement authority
18 under Subdivision (1) to provide training and technological support
19 to the authority with respect to the equipment.

20 (e) A monitoring system that is part of a monitoring system
21 program described by Subsection (d) must track a person's location
22 and periodically provide a cumulative report of the tracked
23 person's location to the department. The monitoring system is not
24 required to be capable of tracking a person's location in real time
25 or providing a real-time report of the person's location to the
26 department.

27 (f) A person who is not indigent and who is required to

1 participate in a monitoring system program described by Subsection
2 (d) is responsible for the cost of the monitoring system and monthly
3 shall pay to the person's primary registration authority and to the
4 department the amount that the primary registration authority or
5 department, as applicable, determines is necessary to defray that
6 entity's cost of operating the system with respect to the person
7 during the preceding month.

8 (g) In the manner prescribed by the criminal justice
9 division of the governor's office, the department shall report to
10 the division the amounts of any money received by the department
11 under Subsection (f). The division shall treat that money as
12 program income for the department and shall use the reported
13 amounts to offset the amounts of grants awarded by the division to
14 the department.

15 (h) The public safety director of the department shall adopt
16 rules as necessary to implement and coordinate the monitoring
17 system program described by Subsection (d).

18 (i) Notwithstanding any other provision of this article,
19 this article does not apply to a person who is released from a penal
20 institution before the date that the monitoring system program is
21 implemented and becomes fully operational.

22 SECTION 6. Section 110.164(a), Occupations Code, is amended
23 to read as follows:

24 (a) The council shall develop or adopt a dynamic risk
25 assessment tool to be used in determining the likelihood that a
26 person who is confined in a penal institution and will become
27 subject to Chapter 62, Code of Criminal Procedure, on being

1 released from the institution will:

2 (1) engage in sexually predatory conduct; or

3 (2) otherwise commit an offense described by Article
4 62.001(5), Code of Criminal Procedure [~~after being released from~~
5 ~~the institution~~].

6 SECTION 7. The Department of Public Safety shall ensure
7 that the electronic mail report service required to be maintained
8 under Article 62.0052, Code of Criminal Procedure, as added by this
9 Act, becomes fully functional and able to receive subscription
10 requests and shall begin to respond appropriately to those requests
11 not later than January 1, 2012.

12 SECTION 8. (a) Not later than September 15, 2011, the
13 Department of Public Safety shall issue a request for
14 qualifications or proposal for the purchase of any monitoring
15 system equipment necessary to operate the monitoring system program
16 described by Article 62.063, Code of Criminal Procedure, as added
17 by this Act, and to operate the monitoring system program described
18 by Chapter 61A, Code of Criminal Procedure, as added by this Act.
19 The department may consider only those responses to the request for
20 qualifications or proposal that are received from, and may only
21 contract with, a manufacturer of the monitoring system equipment.

22 (b) The selection process through which the Department of
23 Public Safety chooses a manufacturer with which to contract under
24 Subsection (a) of this section must include side-by-side test
25 comparisons of all products being considered. In awarding a
26 contract under Subsection (a) of this section, the department may
27 not give greater weight to cost considerations than to

1 considerations concerning the product test results, product
2 reliability and functionality, and the protection of public safety.

3 (c) Subject to the receipt of one or more grants awarded by
4 the criminal justice division of the governor's office, the
5 Department of Public Safety shall ensure that the monitoring system
6 program required under Article 62.063, Code of Criminal Procedure,
7 as added by this Act, becomes fully operational not later than
8 February 29, 2012.

9 SECTION 9. (a) Article 42.0155, Code of Criminal
10 Procedure, as added by this Act, applies only to a judgment of
11 conviction entered for an offense committed on or after the
12 effective date of this Act.

13 (b) The change in law made by this Act in adding Chapter 61A,
14 Code of Criminal Procedure, applies only to an offense committed on
15 or after the effective date of this Act.

16 (c) An offense committed before the effective date of this
17 Act is covered by the law in effect when the offense was committed,
18 and the former law is continued in effect for that purpose. For the
19 purposes of this section, an offense was committed before the
20 effective date of this Act if any element of the offense was
21 committed before that date.

22 SECTION 10. This Act takes effect September 1, 2011.